IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).Nos.857 and 858 of 2007

Commissioner of Income Tax
Chennai. .. Appellant in both T.Cs.

Vs.

M/s.Rane (Madras) Ltd.
61, Valachery Road,
Chennai. .. Respondent in both T.Cs.

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 20.1.2006 in ITA Nos.409/Mds/2000 and 631/Mds/2001 for the assessment years 1996-97 and 1997-98 against the order of the Commissioner of Income Tax Appeal IX, Chennai dated 23.12.99 in ITA.No.39/99-00 for the assessment year 1996-97 and against the order of the Commissioner of Income Tax (Appeals) IX, Chennai dated 30.1.2001 in ITA.No.97/2000-2001 for the assessment year 1997-98 respectively against the order of the Joint Commissioner of Income Tax, Special Range II, Chennai dated 12.3.99 and 20.3.2000, in PAN/GIR.Nos.11-R and AAA CR 4215 M/11-R respectively.

For Appellant : Mrs.Pushya Sitaraman
Sr. Standing Counsel for IT

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J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal in ITA Nos.409/Mds/2000 and 631/Mds/2001 dated 20.1.2006.

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2. The Revenue is the appellant. The relevant assessment years are 1996-97 and 1997-98. The assessee is engaged in the production of recirculating ball type steering gears in the units situated at Velachery and Mysore. During the assessment year 1996-97, the assessee started a new industry at Pondicherry for manufacture of Rack and Pinion Steering Gears and incurred an expenditure of Rs.2,08,00,000/- during the assessment year 1996-97 and Rs.9,48,405/- during the assessment year 1997-98, for the following:-

1. Interest on Exim Bank Loan
2. Various Raw material consumed
3. Stores consumed
4. Tools consumed
5. Travel Expenses (for foreign & Domestic travel of Employees on training & other official purposes)
6. Salaries & Wages
7. Printing & Stationery
8. Computer Stationery
9. Freight inward
10. Freight outward
11. Power & Fuel
12. Insurance
13. Repairs & Maintenance
14. Central Overheads - Madras Plant
15. Other various Miscellaneous expenses.

The assessee claimed the entire expenditure as revenue expenditure. But, the assessing officer, by his assessment orders dated 12.3.99 and 20.3.2000 for the assessment years 1996-97 and 1997-98 respectively, treated these expenses as capital in nature holding that the Pondicherry unit is entirely a new unit. On appeals by the assessee, the Commissioner of Income-tax (Appeals), by his orders dated 23.12.99 and 30.1.2001 for the respective assessment years, held these expenses as revenue in nature and thus, allowed the assessee's appeals. On appeals at the instance of the Revenue, the Tribunal, by its common order dated 20.1.2006, confirmed the orders of the Commissioner of Income-tax (Appeals). Hence, the Revenue has filed the present tax case appeals raising the following substantial questions of law for the assessment years 1996-97 and 1997-98 :-

> "(i) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that the expenditure incurred by the assessee in setting up a new factory at Pondicherry is revenue in nature on the ground that it is only an extension of the existing business

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(ii) Whether the Tribunal was right in holding that the new unit was an extension of the existing business of the assessee, when the products manufactured therein are completely different ? "

3. Further, during the assessment year 1997-98, the expenses incurred by the assessee to the tune of Rs.1,92,48,704/- with respect to the reconditioning of internal thread grinding and external thread grinding machines at UK was disallowed by the assessing officer on the ground that it will have an enduring benefit to the assessee and accordingly, treated the same as capital expenditure. The Commissioner of Income-tax (Appeals), by his order dated 30.1.2001, allowed the appeal filed by the assessee holding the same as revenue expenditure, which was confirmed by the Tribunal by the impugned common order dated 20.1.2006. Aggrieved by the same, the Revenue has raised another substantial question of law, which reads as follows:-

" (iii) Whether in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on reconditioning of machinery, which gave an enduring benefit to the assessee as revenue expenditure ?"

4. Heard Mrs.Pushya Sitaraman, learned senior standing counsel appearing for the Revenue.

5.1. With respect to questions (i) and (ii), the learned senior standing counsel has not disputed the settled proposition of law as held by the Delhi High Court in Additional Commissioner of Income-tax v. Rewari Electric Supply & Industries [(1982) 138 I.T.R. 473], by the Bombay High Court in Additional Commissioner of Income-tax v. Aniline Dyestuffs & Pharmaceuticals (P) Ltd. [(1982) 138 I.T.R. 843]and by this Court in South India Viscos Ltd. v. Commissioner of Income-tax [(1998) 229 I.T.R. 203], whereunder it is held that the interest paid on monies borrowed for purchase of machinery is allowable as business expenditure. Similarly, there is no dispute as to the proposition of law that the interest on borrowed capital regardless of the fact whether new unit had gone into production or not is a revenue expenditure as held by the Madhya Pradesh High Court in Commissioner of Income-tax v. Bilai Iron & Steel Ltd. [(1998) 234 I.T.R. 667].

5.2. Therefore, the only crucial issue is whether the industry started by the assessee at Pondicherry for manufacture of Rack and Pinion Steering Gears is an extension of existing units at Velachery and Mysore engaged in the production of recirculating ball type steering gears. A reference to the factual aspect of

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the case is relevant to decide whether the industry started at Pondicherry for manufacture of Rack and Pinion Steering Gears is an extension of the existing units at Madras and Mysore or is totally a new unit by itself.

5.3. Both the appellate authorities below have concurrently found that while the existing units at Velachery and Mysore are engaged in recirculating ball type steering gears, in the new industry at Pondicherry, the assessee proposed to manufacture rack and pinion steering gears. It is not in dispute that in both the units, viz., existing units at Velachery and Mysore and new unit at Pondicherry, the assessee manufactures the steering gears, while at Velachery and Mysore, it manufactures ball type steering gears and at Pondicherry, rack and pinion steering gears. Except the change in the manufacturing process and mechanism of steering gears, the ultimate production at all the places remains the same, viz. steering gears. If that be so, such a change in the manufacturing process and in the mechanism, is nothing but based on new technology brought in and the introduction of such a new technology would not be a ground to construe that the steering gears manufactured at Pondicherry are totally a new production by the assessee. It is for that reason, both the Commissioner and the Tribunal had rightly come to the conclusion that the industry set up by the assessee at Pondicherry is not a new industry, as the same does not manufacture any new products.

5.4. Once there is no difficulty to reach a conclusion that the product remains one and the same, viz., steering gears, we do not hesitate to hold that the industry set up at Pondicherry is nothing but an extension of the existing industries at Velacherry and Mysore and the deduction claimed by the assessee with regard to the expenditure incurred in connection with the new unit at Pondicherry, even though it is independent, because of the interconnection of management, financial, administrative and production aspects, such expenditure has to be construed as revenue in nature and therefore, deductible, vide the decisions of Karnataka High Court in Commissioner of Income-tax v. Indian Telephone Industries Ltd. [(1989) 175 I.T.R. 215] and in Commissioner of Income-tax v. Hindustan Machine Tools Ltd. [(1989) 175 I.T.R. 212]; as well as the decision of the Delhi High Court in Additional Commissioner of Income-tax v. Rewari Electric Supply & Industries [(1982) 138 I.T.R. 473]; Bombay High Court in Additional Commissioner of Income-tax v. Aniline Dyestuffs & Pharmaceuticals (P) Ltd. [(1982) 138 I.T.R. 843]; this Court in South India Viscos Ltd. v. Commissioner of Income-tax [(1998) 229 I.T.R. 203] and the decision of Madhya Pradesh High Court in Commissioner of Income-tax v. Bilai Iron & Steel Ltd. [(1998) 234 I.T.R. 667], referred supra.

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5.5. In view of the above, we do not see any substantial question of law that arises for our consideration with regard to the issue raised in questions (i) and (ii).

6.1. With regard to the third question, viz., whether the amounts spent on reconditioning of machinery is a revenue expenditure, it is well settled that if any replacement or reconditioning of machinery is made with a view to maintain the existing asset, the expenditure incurred on such replacement or reconditioning has to be treated as revenue expenditure.

6.2. The Andhra Pradesh High Court in Commissioner of Income-tax v. Nizam Sugar Factory Ltd. [(1979) 116 I.T.R. 0706], held that if the replacement of spare parts and reconditioning of generator is with a view to preserve and maintain the existing asset and if no new asset is created in the process of such replacement, the expenditure incurred on such replacement constitutes revenue expenditure, as the amounts spent on replacement of spare parts cannot be said to have created any advantage of enduring nature to the assessee.

6.3. Further, in Commissioner of Incme-tax v. Kalyanji Mavji and Co. [(1980) 122 I.T.R. 49], where the assessee incurred expenditure in renovating the building, reconditioning the machinery, etc. and claimed the same as revenue expenditure, which was disallowed by the department and the Tribunal and on a reference to the Calcutta High Court, it was held as revenue expenditure, the Apex Court affirmed the view of the Calcutta High Court and held that no new asset was brought into existence nor was an advantage for the enduring benefit of the business and thus, the expenditure was revenue in character.

6.4. The Bombay High Court in Commissioner of Income-tax v. Chowgule and Co. Pvt. Ltd. [(1995) 214 I.T.R. 523], held that if the existing units and the new unit, even though independent, are interlacing and interconnected with the management, financial, administrative and production aspects, the reconditioning of the existing machineries is nothing but a replacement by new parts and therefore, the expenditure incurred in that regard has to be treated as a revenue expenditure, as the same is intended for putting the machineries in a working condition and did not result in emergence of a new asset.

6.5. Accordingly, we also do not see any question of law for consideration of the same by this Court with regard to the issue raised in question (iii).

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In such circumstances, we find no error or illegality in the order of the Tribunal. Accordingly, finding no substantial question of law arises for our consideration, the tax case appeals stand dismissed.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Sastri Bhavan, Rajaji Salai,
Bench "B", Chennai.

2.The Commissioner of Income Tax
(Appeals IX), 121, Mahatma Gandhi Road, Chennai 34.

3.The Joint Commissioner of
Income-tax, Special Range-II,
Chennai.34.

4.The Commissioner of Income Tax, Chennai.

+ 1 cc to Ms. Pushya Sitaraman, Advocate SR No. 37300

GG(CO)
SR/17.7.2007

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